

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1223**

**Introduced by Assembly Members Leno and Lieber**  
**(Coauthors: Assembly Members DeVore, Hancock, Jones, and**  
**Koretz)**

February 22, 2005

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An act to amend ~~Section~~ Sections 3051, 11705, and 11713.3 of, and to add ~~Section~~ Sections 11701.1 and 11713.13 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1223, as amended, Leno. ~~Manufacture-direct~~ Internet: vehicle sales: low-emission vehicles.

**Existing**

(1) ~~Existing~~ law makes it unlawful for a ~~vehicle manufacturer to sell vehicles for resale to persons~~ person who ~~are~~ is not licensed by the Department of Motor Vehicles under the occupational provisions of the Vehicle Code ~~to sell vehicles~~.

This bill would allow a ~~vehicle manufacturer~~ person who holds an Internet hybrid vehicle sales license, as provided for in the bill, or ~~its agent~~ a designated authorized person, to engage in the business of directly selling ~~to an unlicensed person the manufacturer's~~ a new motor vehicle that meets the state's super ultra-low-emission vehicle (SULEV) ~~standard for exhaust emissions and the federal inherently low-emission vehicle (ILEV) evaporation emission standard.~~ is certified as a zero emission vehicle (ZEV) or qualifies as an advanced technology partial zero emission vehicle (AT-PZEV) to a member of the public for that person's personal or business use, and not for

resale, or to a person licensed under the occupational licensing provisions of the Vehicle Code.

(2) Existing law establishes a New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as specified.

This bill would exclude a licensee holding an Internet hybrid vehicle sales license from the scope of these provisions.

(3) Because a violation of the occupational licensing provisions of the Vehicle Code is a misdemeanor, this bill would impose a state-mandated local program by creating new crimes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. This act shall be known and may be cited as the
- 2     Global Warming Hybrid Vehicle Internet Incentive Act of 2006.
- 3     SEC. 2. (a) In order to provide guidance in carrying out this
- 4     act, the Legislature finds and declares all of the following:
- 5     (1) It is the intent of the Legislature to authorize the sale on
- 6     the Internet of new hybrid and hydrogen vehicles by
- 7     manufacturers and Internet retailers in order to increase
- 8     competition and provide a manufacturer incentive to produce
- 9     more hybrid and hydrogen vehicles for the purpose of reducing
- 10    air pollution and dependence on foreign oil and combating
- 11    global warming:
- 12    (2) There is a shortage of available hybrid vehicles to meet
- 13    consumer demand, creating long vehicle waiting lists and
- 14    allowing some dealers to gouge consumers:
- 15    (3) The California's Motor Car Dealers' Association and the
- 16    Alliance of Automobile Manufacturers have sued the California
- 17    Air Resources Board to block implementation of California's
- 18    first in the nation global warming regulations, alleging that the

1 *cost of implementation will raise vehicle prices about three*  
2 *thousand dollars (\$3,000) per vehicle.*

3 *(4) The Federal Trade Commission, the Consumer Federation*  
4 *of America, and numerous empirical studies have concluded that*  
5 *reducing anticompetitive restrictions on the sale of new motor*  
6 *vehicles could reduce the costs to consumers by as much as 9 to*  
7 *16 percent (about two thousand five hundred dollars (\$2,500))*  
8 *on the average purchase.*

9 *(5) The Legislature in 1973 granted a de facto antitrust*  
10 *exemption to California new car dealers and manufacturers by*  
11 *amending relevant statutes to make competition among car*  
12 *dealers for the same make and model vehicle within a 10-mile*  
13 *radius of an authorized dealership a crime. It is the intent of the*  
14 *Legislature in the enactment of this act to encourage the*  
15 *production and sales of hybrid and hydrogen vehicles through*  
16 *increasing competition by creating an exception to the 10-mile*  
17 *radius law.*

18 *(6) It is a misdemeanor under state law for anyone except a*  
19 *dealer licensed by the Department of Motor Vehicles to sell a*  
20 *new motor vehicle on the Internet; and, therefore, licensed new*  
21 *motor vehicle dealers are currently the only businesses*  
22 *authorized to sell a new motor vehicle over the Internet.*

23 *(7) Internet technology is increasing competition and*  
24 *revolutionizing the retail sale of music, electronics, computers,*  
25 *and thousands of other consumer products.*

26 *(b) It is the intent of the Legislature to enact an innovative*  
27 *project in new car competition by removing anticompetitive car*  
28 *dealer restrictions on the sale of new hybrid and hydrogen*  
29 *vehicles by allowing automobile manufacturers, Internet*  
30 *retailers, and other businesses including, but not limited to,*  
31 *Amazon.com, eBay, Google, Apple, or newspaper companies to*  
32 *engage in the sale of new hybrid and hydrogen vehicles as long*  
33 *as those entities comply with relevant state tax, environmental,*  
34 *and consumer protection laws.*

35 *[PU Amended by Stats. 2003, Ch. 703, Sec. 5. Effective*  
36 *January 1, 2004.]*

37 *SEC. 3. Section 3051 of the Vehicle Code is amended to read:*

38 *3051. This chapter does not apply to ~~any~~ a person licensed as*  
39 *a transporter under Article 1 (commencing with Section 11700)*  
40 *~~or as~~, an Internet hybrid vehicle sale licensee under Section*

1 11701.1, or a salesperson under Article 2 (commencing with  
2 Section 11800) of Chapter 4 of Division 5, or to ~~any~~ a licensee  
3 who is not a new motor vehicle dealer, motor vehicle  
4 manufacturer, manufacturer branch, new motor vehicle  
5 distributor, distributor branch, or representative. This chapter  
6 does not apply to transactions involving “mobilehomes,” as  
7 defined in Section 18008 of the Health and Safety Code,  
8 “recreational vehicles,” as defined in subdivision (b) of Section  
9 18010 of the Health and Safety Code, truck campers,  
10 “commercial coaches,” as defined in Section 18001.8 of the  
11 Health and Safety Code, or off-highway motor vehicles subject  
12 to identification, as defined in Section 38012, except off-highway  
13 motorcycles, as defined in Section 436, and all-terrain vehicles,  
14 as defined in Section 111. Except as otherwise provided in this  
15 chapter, this chapter applies to a new motor vehicle dealer, a  
16 dealer of new recreational vehicles, as defined in subdivision (a)  
17 of Section 18010 of the Health and Safety Code, except a dealer  
18 who deals exclusively in truck campers, a vehicle manufacturer,  
19 as defined in Section 672, a manufacturer branch, as defined in  
20 Section 389, a distributor, as defined in Section 296, a distributor  
21 branch, as defined in Section 297, a representative, as defined in  
22 Section 512, or an applicant therefor.

23 *SEC. 4. Section 11701.1 is added to the Vehicle Code, to*  
24 *read:*

25 *11701.1. (a) The department may issue an Internet hybrid*  
26 *vehicle sales license limited to authorizing Internet sales or*  
27 *leases of one or both of the following vehicles:*

28 *(1) A zero emission vehicle (ZEV) certified in accordance with*  
29 *Section 1962 of Title 13 of the California Code of Regulations.*

30 *(2) An advanced technology partial zero emission vehicle*  
31 *(AT-PZEV) that qualifies under Section 1962 of Title 13 of the*  
32 *California Code of Regulations for that allowance.*

33 *(b) Except as expressly provided by law, an applicant applying*  
34 *for a license described in subdivision (a) is subject to all of the*  
35 *provisions of this chapter that apply to the issuance of a license*  
36 *to a dealer.*

37 *(c) Except as expressly provided by law or as may be*  
38 *impractical, all provisions of this code that apply to a licensed*  
39 *dealer apply to a licensee described in subdivision (a).*

1     (d) (1) Notwithstanding Section 11712 or any other provision  
2 of law, a licensee described in subdivision (a) is only required to  
3 maintain an office in this state where the books and records  
4 pertinent to transactions involving the sales of new vehicles that  
5 are delivered to an address in this state are maintained.

6     (2) The address and telephone number of the office described  
7 in paragraph (1) shall be on file with the department.

8     (3) A person licensed under this section who has closed his or  
9 her office may be served with process issued pursuant to Chapter  
10 5 (commencing with Section 11500) of Part 1 of Division 3 of  
11 Title 2 of the Government Code by registered mail at that place  
12 of business or at the mailing address of record if different from  
13 the place of business, unless the person has notified the  
14 department in writing of another address where service may be  
15 made.

16     (e) Subdivision (r) of Sections 11713 and Sections 11713.2  
17 and 11713.3 do not apply to a licensee described in subdivision  
18 (a).

19     (f) The notice statement described in Section 11709.2 shall be  
20 provided on the Internet to a prospective purchaser or lessee by  
21 the licensee prior to the purchase or lease of a vehicle.

22     (g) A person licensed under this section is subject to all of the  
23 consumer protection laws that apply to the sale or lease of a  
24 motor vehicle by a dealer except as expressly provided by law.

25     SEC. 5. Section 11705 of the Vehicle Code is amended to  
26 read:

27     11705. (a) The department, after notice and hearing, may  
28 suspend or revoke the license issued to a dealer, transporter,  
29 manufacturer, manufacturer branch, remanufacturer,  
30 remanufacturer branch, distributor, or distributor branch upon  
31 determining that the person to whom the license was issued is not  
32 lawfully entitled thereto, or has done any of the following:

33     (1) Filed an application for the license using a false or  
34 fictitious name not registered with the proper authorities, or  
35 knowingly made any false statement or knowingly concealed any  
36 material fact, in the application for the license.

37     (2) Made, or knowingly or negligently permitted, any illegal  
38 use of the special plates issued to the licensee.

39     (3) Used a false or fictitious name, knowingly made any false  
40 statement, or knowingly concealed any material fact, in any

1 application for the registration of a vehicle, or otherwise  
2 committed a fraud in the application.

3 (4) Failed to deliver to a transferee lawfully entitled thereto a  
4 properly endorsed certificate of ownership.

5 (5) Knowingly purchased, sold, or otherwise acquired or  
6 disposed of a stolen motor vehicle.

7 (6) Failed to provide and maintain a clear physical division  
8 between the type of business licensed pursuant to this chapter  
9 and any other type of business conducted at the established place  
10 of business.

11 (7) Willfully violated Section 3064 or 3065 or any rule or  
12 regulation adopted pursuant thereto.

13 (8) Violated any provision of Division 3 (commencing with  
14 Section 4000) or any rule or regulation adopted pursuant thereto,  
15 or subdivision (a) of Section 38200.

16 (9) Violated any provision of Division 4 (commencing with  
17 Section 10500) or any rule or regulation adopted pursuant  
18 thereto.

19 (10) Violated any *applicable* provision of ~~Article 1~~  
20 ~~(commencing with Section 11700) of Chapter 4 of Division 5~~  
21 *this article* or any rule or regulation adopted pursuant ~~thereto~~ *to*  
22 *this article*.

23 (11) Violated any provision of Part 5 (commencing with  
24 Section 10701) of Division 2 of the Revenue and Taxation Code  
25 or any rule or regulation adopted pursuant ~~thereto~~ *to that part*.

26 (12) Violated any provision of Chapter 2b (commencing with  
27 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil  
28 Code or any rule or regulation adopted pursuant ~~thereto~~ *to that*  
29 *chapter*.

30 (13) Submitted a check, draft, or money order to the  
31 department for any obligation or fee due the state which was  
32 dishonored or refused payment upon presentation.

33 (14) Has caused any person to suffer any loss or damage by  
34 reason of any fraud or deceit practiced on that person or  
35 fraudulent representations made to that person in the course of  
36 the licensed activity.

37 For purposes of this paragraph, “fraud” includes any act or  
38 omission which is included within the definition of either “actual  
39 fraud” or “constructive fraud” as defined in Sections 1572 and  
40 1573 of the Civil Code, and “deceit” has the same meaning as

defined in Section 1710 of the Civil Code. In addition, “fraud” and “deceit” include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, “person” also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

#### ~~SECTION 1.~~

*SEC. 6.* Section 11713.3 of the Vehicle Code is amended to read:

11713.3. It is unlawful and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the

1 manufacturer, manufacturer branch, distributor, or distributor  
2 branch.

3 (b) To prevent or require, or attempt to prevent or require, by  
4 contract or otherwise, any change in the capital structure of a  
5 dealership or the means by or through which the dealer finances  
6 the operation of the dealership, provided that the dealer at all  
7 times meets any reasonable capital standards agreed to by the  
8 dealer and the manufacturer or distributor, and also provided that  
9 no change in capital structure shall cause a change in the  
10 principal management or have the effect of a sale of the franchise  
11 without the consent of the manufacturer or distributor.

12 (c) To prevent or require, or attempt to prevent or require, a  
13 dealer to change the executive management of a dealership, other  
14 than the principal dealership operator or operators if the franchise  
15 was granted the dealer in reliance upon the personal  
16 qualifications of that person or persons.

17 (d) (1) Except as provided in subdivision (t), to prevent or  
18 require, or attempt to prevent or require, by contract or otherwise,  
19 any dealer, or any officer, partner, or stockholder of any  
20 dealership, the sale or transfer of any part of the interest of any of  
21 them to any other person or persons. No dealer, officer, partner,  
22 or stockholder shall, however, have the right to sell, transfer, or  
23 assign the franchise, or any right thereunder, without the consent  
24 of the manufacturer or distributor except that the consent shall  
25 not be unreasonably withheld.

26 (2) (A) For the transferring franchisee to fail, prior to the sale,  
27 transfer, or assignment of a franchisee or the sale, assignment, or  
28 transfer of all or substantially all of the assets of the franchised  
29 business or a controlling interest in the franchised business to  
30 another person, to notify the manufacturer or distributor of the  
31 franchisee's decision to sell, transfer, or assign the franchise. The  
32 notice shall be in writing and shall include all of the following:

33 (i) The proposed transferee's name and address.

34 (ii) A copy of all of the agreements relating to the sale,  
35 assignment, or transfer of the franchised business or its assets.

36 (iii) The proposed transferee's application for approval to  
37 become the successor franchisee. The application shall include  
38 forms and related information generally utilized by the  
39 manufacturer or distributor in reviewing prospective franchisees,  
40 if those forms are readily made available to existing franchisees.



1 As soon as practicable after receipt of the proposed transferee's  
2 application, the manufacturer or distributor shall notify the  
3 franchisee and the proposed transferee of any information needed  
4 to make the application complete.

5 (B) For the manufacturer or distributor, to fail on or before 60  
6 days after the receipt of all of the information required pursuant  
7 to subparagraph (A), or as extended by a written agreement  
8 between the manufacturer or distributor and the franchisee, to  
9 notify the franchisee of the approval or the disapproval of the  
10 sale, transfer, or assignment of the franchise. The notice shall be  
11 in writing and shall be personally served or sent by certified mail,  
12 return receipt requested, or by guaranteed overnight delivery  
13 service that provides verification of delivery and shall be directed  
14 to the franchisee. Any proposed sale, assignment, or transfer  
15 shall be deemed approved, unless disapproved by the franchisor  
16 in the manner provided by this subdivision. If the proposed sale,  
17 assignment, or transfer is disapproved, the franchisor shall  
18 include in the notice of disapproval a statement setting forth the  
19 reasons for the disapproval.

20 (3) In an action in which the manufacturer's or distributor's  
21 withholding of consent under this subdivision or subdivision (e)  
22 is an issue, whether the withholding of consent was unreasonable  
23 is a question of fact requiring consideration of all the existing  
24 circumstances.

25 (e) To prevent, or attempt to prevent, a dealer from receiving  
26 fair and reasonable compensation for the value of the franchised  
27 business. There shall be no transfer or assignment of the dealer's  
28 franchise without the consent of the manufacturer or distributor,  
29 which consent shall not be unreasonably withheld or conditioned  
30 upon the release, assignment, novation, waiver, estoppel, or  
31 modification of any claim or defense by the dealer.

32 (f) To obtain money, goods, service, or other benefit from any  
33 other person with whom the dealer does business, on account of,  
34 or in relation to, the transaction between the dealer and that other  
35 person, other than for compensation for services rendered, unless  
36 the benefit is promptly accounted for, and transmitted to, the  
37 dealer.

38 (g) To require a dealer to prospectively assent to a release,  
39 assignment, novation, waiver, or estoppel which would relieve  
40 any person from liability to be imposed by this article or to

1 require any controversy between a dealer and a manufacturer,  
2 distributor, or representative, to be referred to any person other  
3 than the board, if the referral would be binding on the dealer.  
4 This subdivision does not, however, prohibit arbitration before an  
5 independent arbitrator.

6 (h) To increase the prices of motor vehicles that the dealer had  
7 ordered for private retail consumers prior to the dealer's receipt  
8 of the written official price increase notification. A sales contract  
9 signed by a private retail consumer is evidence of each such  
10 order. In the event of manufacturer price reductions, the amount  
11 of the reduction received by a dealer shall be passed on to the  
12 private retail consumer by the dealer if the retail price was  
13 negotiated on the basis of the previous higher price to the dealer.  
14 Price reductions apply to all vehicles in the dealer's inventory  
15 which were subject to the price reduction. Price differences  
16 applicable to new model or series motor vehicles at the time of  
17 the introduction of new models or series shall not be considered  
18 a price increase or price decrease. Price changes caused by either  
19 of the following:

20 (1) The addition to a motor vehicle of required or optional  
21 equipment pursuant to state or federal law.

22 (2) Revaluation of the United States dollar in the case of  
23 foreign-make vehicles, are not subject to this subdivision.

24 (i) To fail to pay to a dealer, within a reasonable time  
25 following receipt of a valid claim by a dealer thereof, any  
26 payment agreed to be made by the manufacturer or distributor to  
27 the dealer by reason of the fact that a new vehicle of a prior year  
28 model is in the dealer's inventory at the time of introduction of  
29 new model vehicles.

30 (j) To deny the widow or heirs designated by a deceased  
31 owner of a dealership, the opportunity to participate in the  
32 ownership of the dealership or successor dealership under a valid  
33 franchise for a reasonable time after the death of the owner.

34 (k) To offer refunds or other types of inducements to a person  
35 for the purchase of new motor vehicles of a certain line-make to  
36 be sold to the state or any political subdivision thereof without  
37 making the same offer to all other dealers in the same line-make  
38 within the relevant market area.

1 (l) To modify, replace, enter into, relocate, terminate or refuse  
2 to renew a franchise in violation of Article 4 (commencing with  
3 Section 3060) of Chapter 6 of Division 2.

4 (m) To employ a person as a representative who has not been  
5 licensed pursuant to Article 3 (commencing with Section 11900)  
6 of Chapter 4 of Division 5.

7 (n) To deny a dealer the right of free association with another  
8 dealer for any lawful purpose.

9 (o) (1) To compete with a dealer in the same line-make  
10 operating under an agreement or franchise from a manufacturer  
11 or distributor in the relevant market area.

12 (2) A manufacturer, branch, or distributor or any entity that  
13 controls or is controlled by, a manufacturer, branch, or  
14 distributor, shall not, however, be deemed to be competing in the  
15 following limited circumstances:

16 (A) Owning or operating a dealership for a temporary period,  
17 not to exceed one year. However, after a showing of good cause  
18 by a manufacturer, branch, or distributor that it needs additional  
19 time to operate a dealership in preparation for sale to a successor  
20 independent franchisee, the board may extend the time period.  
21 The board shall extend the time period until December 31, 2002,  
22 for any manufacturer that meets all of the following  
23 requirements:

24 (i) The manufacturer has no more than 25 franchisees in the  
25 state and those franchisees collectively operate dealership  
26 facilities in at least 15 counties of the state.

27 (ii) All of the dealership facilities operated by the  
28 manufacturer's franchisees in the state trade exclusively in the  
29 manufacturer's line-make.

30 (iii) No fewer than one-half of the manufacturer's franchisees  
31 in the state own and operate two or more dealership facilities in  
32 their assigned areas of responsibility.

33 (iv) The manufacturer holds a temporary ownership interest in  
34 no more than two dealerships in the state that are located in the  
35 relevant market area of any other franchisee of the same  
36 line-make not owned, in whole or part, by the manufacturer.

37 (B) Owning an interest in a dealer as part of a bona fide dealer  
38 development program that satisfies all of the following  
39 requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) Every manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires or divests itself of an ownership interest.

(B) Every manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) (1) To sell vehicles to persons not licensed under this chapter for resale.

~~(2) Paragraph (1) does not apply to the sale of a vehicle under~~  
(2) *Nothing in paragraph (1) or any other law prohibits a*

1 *manufacturer who is an Internet hybrid vehicle sales licensee*  
2 *from selling a vehicle in accordance with Section 11713.13.*

3 (r) To fail to affix an identification number to any park trailer,  
4 as described in Section 18009.3 of the Health and Safety Code,  
5 that is manufactured on or after January 1, 1987, and which does  
6 not clearly identify the unit as a park trailer to the department.  
7 The configuration of the identification number shall be approved  
8 by the department.

9 (s) To dishonor a warranty, rebate, or other incentive offered  
10 to the public or a dealer in connection with the retail sale of a  
11 new motor vehicle, based solely upon the fact that an autobroker  
12 arranged or negotiated the sale. This subdivision does not  
13 prohibit the disallowance of that rebate or incentive if the  
14 purchaser or dealer is ineligible to receive the rebate or incentive  
15 pursuant to any other term or condition of a rebate or incentive  
16 program.

17 (t) To exercise a right of first refusal or any other right  
18 requiring a franchisee or any owner thereof to sell, transfer, or  
19 assign to the franchisor, or to any nominee of the franchisor, all  
20 or any material part of the franchised business or of the assets  
21 thereof unless all of the following requirements are met:

22 (1) The franchise authorizes the franchisor to exercise a right  
23 of first refusal to acquire the franchised business or assets thereof  
24 in the event of a proposed sale, transfer or assignment.

25 (2) The franchisor gives written notice of its exercise of the  
26 right of first refusal no later than 45 days after the franchisor  
27 receives all of the information required pursuant to subparagraph  
28 (A) of paragraph (2) of subdivision (d).

29 (3) The sale, transfer, or assignment being proposed relates to  
30 not less than all or substantially all of the assets of the franchised  
31 business or to a controlling interest in the franchised business.

32 (4) The proposed transferee is neither a family member of an  
33 owner of the franchised business, nor a managerial employee of  
34 the franchisee owning 15 percent or more of the franchised  
35 business, nor a corporation, partnership, or other legal entity  
36 owned by the existing owners of the franchised business. For  
37 purposes of this paragraph, a “family member” means the spouse  
38 of an owner of the franchised business, the child, grandchild,  
39 brother, sister, or parent of an owner, or a spouse of one of those  
40 family members. Nothing contained in this paragraph limits the

1 rights of the franchisor to disapprove a proposed transferee as  
2 provided in subdivision (d).

3 (5) Upon the franchisor's exercise of the right of first refusal,  
4 the consideration paid by the franchisor to the franchisee and  
5 owners of the franchised business shall equal or exceed all  
6 consideration that each of them were to have received under the  
7 terms of, or in connection with, the proposed sale, assignment, or  
8 transfer, and the franchisor shall comply with all the terms and  
9 conditions of the agreement or agreements to sell, transfer, or  
10 assign the franchised business.

11 (6) The franchisor shall reimburse the proposed transferee for  
12 any expenses paid or incurred by the proposed transferee in  
13 evaluating, investigating, and negotiating the proposed transfer to  
14 the extent those expenses do not exceed the usual, customary,  
15 and reasonable fees charged for similar work done in the area in  
16 which the franchised business is located. These expenses include,  
17 but are not limited to, legal and accounting expenses, and  
18 expenses incurred for title reports and environmental or other  
19 investigations of any real property on which the franchisee's  
20 operations are conducted. The proposed transferee shall provide  
21 the franchisor a written itemization of those expenses, and a copy  
22 of all nonprivileged reports and studies for which expenses were  
23 incurred, if any, within 30 days of the proposed transferee's  
24 receipt of a written request from the franchisor for that  
25 accounting. The franchisor shall make payment within 30 days of  
26 exercising the right of first refusal.

27 (u) (1) To unfairly discriminate in favor of any dealership  
28 owned or controlled, in whole or part, by a manufacturer or  
29 distributor or an entity that controls or is controlled by the  
30 manufacturer or distributor. Unfair discrimination includes, but is  
31 not limited to, the following:

32 (A) The furnishing to a franchisee or dealer that is owned or  
33 controlled, in whole or part, by a manufacturer, branch or  
34 distributor of any of the following:

35 (i) A vehicle that is not made available to each franchisee  
36 pursuant to a reasonable allocation formula that is applied  
37 uniformly, and any part or accessory that is not made available to  
38 all franchisees on an equal basis when there is no reasonable  
39 allocation formula that is applied uniformly.

1 (ii) A vehicle, part, or accessory that is not made available to  
2 each franchisee on comparable delivery terms, including time of  
3 delivery after placement of order. Differences in delivery terms  
4 due to geographic distances or other factors beyond the control of  
5 the manufacturer, branch, or distributor shall not constitute unfair  
6 competition.

7 (iii) Information obtained from a franchisee by the  
8 manufacturer, branch, or distributor concerning the business  
9 affairs or operations of any franchisee in which the manufacturer,  
10 branch, or distributor does not have an ownership interest. The  
11 information includes, but is not limited to, information contained  
12 in financial statements and operating reports, the name, address,  
13 or other personal information or buying, leasing, or service  
14 behavior of any dealer customer, and any other information  
15 which if provided to a franchisee or dealer owned or controlled  
16 by a manufacturer or distributor would give that franchisee or  
17 dealer a competitive advantage. This clause does not apply if the  
18 information is provided pursuant to a subpoena or court order, or  
19 to aggregated information made available to all franchisees.

20 (B) Referring a prospective purchaser or lessee to a dealer in  
21 which a manufacturer, branch, or distributor has an ownership  
22 interest unless the prospective purchaser or lessee resides in the  
23 area of responsibility assigned to that dealer or the prospective  
24 purchaser or lessee requests to be referred to that dealer.

25 (2) Nothing in this subdivision shall be interpreted to prohibit  
26 a franchisor from granting a franchise to prospective franchisees  
27 or assisting those franchisees during the course of the franchise  
28 relationship as part of a program or programs to make franchises  
29 available to persons lacking capital, training, business  
30 experience, or other qualifications ordinarily required of  
31 prospective franchisees.

32 (v) As used in this section, “area of responsibility” is a  
33 geographic area specified in a franchise that is used by the  
34 franchisor for the purpose of evaluating the franchisee’s  
35 performance of its sales and service obligations.

36 ~~SEC. 2. Section 11713.13 is added to the Vehicle Code, to~~  
37 ~~read:~~

38 ~~11713.13. Notwithstanding any other provision of law, a~~  
39 ~~vehicle manufacturer or its agent may engage in the business of~~  
40 ~~directly selling to a person who is not licensed under this chapter~~

1 ~~the manufacturer's new motor vehicle that meets the state's super~~  
2 ~~ultra-low-emission vehicle (SULEV) standard for exhaust~~  
3 ~~emissions and the federal inherently low-emission vehicle~~  
4 ~~(HLEV) evaporative emission standard, as defined in Part 88~~  
5 ~~(commencing with Section 88.101-94) of Title 40 of the Code of~~  
6 ~~Federal Regulations.~~

7 *SEC. 7. Section 11713.13 is added to the Vehicle Code, to*  
8 *read:*

9 *11713.13. (a) Notwithstanding any other provision of law, an*  
10 *Internet hybrid vehicle sales licensee who holds a license under*  
11 *Section 11701.1 may sell directly, or through a contractual*  
12 *relationship with a designated person, a vehicle described in*  
13 *subdivision (b) to either of the following:*

14 *(1) A member of the public for that person's personal use or*  
15 *business use, and not for resale.*

16 *(2) A person licensed under this chapter.*

17 *(b) Subdivision (a) applies only to the sale of the following*  
18 *vehicles:*

19 *(1) A zero emission vehicle (ZEV) certified in accordance with*  
20 *Section 1962 of Title 13 of the California Code of Regulations.*

21 *(2) An advanced technology partial zero emission vehicle*  
22 *(AT-PZEV) that qualifies under Section 1962 of Title 13 of the*  
23 *California Code of Regulations for that allowance.*

24 *SEC. 8. No reimbursement is required by this act pursuant to*  
25 *Section 6 of Article XIII B of the California Constitution because*  
26 *the only costs that may be incurred by a local agency or school*  
27 *district will be incurred because this act creates a new crime or*  
28 *infraction, eliminates a crime or infraction, or changes the*  
29 *penalty for a crime or infraction, within the meaning of Section*  
30 *17556 of the Government Code, or changes the definition of a*  
31 *crime within the meaning of Section 6 of Article XIII B of the*  
32 *California Constitution.*